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NO. 678

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

GENERAL GEOPHYSICAL COMPANY, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY OF PETITIONER TO MEMORANDUM OF THE UNITED STATES IN OPPOSITION

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The memorandum of the United States in opposition to the petition for a writ of certiorari gives a completely distorted and inaccurate picture of this whole case.

First, that memorandum states in the beginning on page 1 (emphasis added by us):

> "Legal counsel advised the stockholders, however, that there would be less risk of the notes being subordinated

to the claims of other creditors in the event of insolvency if the corporation *first* transferred to the stockholders property worth $746,525 *and the stockholders then retransferred* the property to the corporation in exchange for the notes."

The undersigned (hereinafter referred to in the first person) was the legal counsel referred to. I never advised any such thing. I told the retiring stockholders they could not afford to take notes for stock because of the bankruptcy question involved. I told the Bank as executor that it could not afford to take this risk. I never told them to have the petitioner *first* transfer the properties to the stockholders and *then* for them to retransfer the properties to petitioner. The most I told them was that, if properties were transferred to the retiring stockholders, the stock would be validly retired. I never told the Bank to retransfer the properties to petitioner. I did tell the Bank that the transfer to it must be absolute with no agreement by the Bank as to what it would do with the properties. All witnesses testified there was no agreement. (See my testimony, R. 103-105).

The respondent then says that the retransfer to petitioner was all planned. I testified that, although I was representing the Bank, even I did not know whether the Bank would sell the properties back to petitioner (R. 103-105). Sappington, Hall and Grubb, petitioner's officers, testified they did not know whether the Bank would sell the properties to petitioner or not. Grubb testified he selected the properties by categories and kept out the necessary properties for petitioner to continue business if the Bank did not resell (R. 63, 64, 74).

The Court of Appeals in its original opinion stated that this transaction

"gives off an unmistakably hollow sound when it is tapped."

In our argument appended to our motion for rehearing in that Court, we asked that Court the following question and made the following answer (pp. 2-3), and we address the same question and answer to this Court:

> "May we at this point ask the members of this Court if they truly believe that this whole deal was thought up by appellee to enable it to get a basis of $746,525 for these properties and then all the talk about this Court's bankruptcy decision in Robinson v. Wangemann, 75 F. 2d 756, was framed up so as to hide this supposed tax evasion sham and device? We as counsel before this Court can only assure it that such was not the case and the District Court believed the testimony of the four witnesses, Sappington, Hall, Grubb and Bruce and held there was no sham but a bona fide business move."

We ask this Court in all fairness to petitioner to read our summary of the transaction as set forth on pages 3 to 13 of that argument on our motion for rehearing. It was so convincing to the Court below that it drastically modified its original opinion by its opinion on the rehearing, saying in part:

> "We do not question the integrity of the parties or suggest that there was any flim-flam. We do not doubt the business purpose of the transaction."

But the respondent states (p. 2) that while the transaction may be valid

> "for *state* law purposes"

it is not for Federal tax purposes. Where it gets the *state* law purposes we do not know. What we were dealing with was the *Federal* bankruptcy law. If petitioner had to take the course it did because of the Federal *bankruptcy* law, then why should it not be recognized for Federal *income tax* law purposes? (Incidentally the significance of the Maryland ground rent cases completely escapes us.)

The Court will obviously bear in mind that sham cases like *Gregory v. Helvering*, 293 U.S. 465, and the other cases cited by respondent are wholly inapplicable as there is no sham involved in this case.

We still submit the holding of the Court below is in direct conflict with *United States v. McNair Realty Company*, 298 F. 2d 35, (Appendix D to Petition).

We would like to call attention to the following statement on page 4 of the respondent's memorandum:

> "Indeed, were so painless a method of obtaining a stepped-up basis for depreciation of even colorable efficacy, it would hardly have been overlooked for so long."

We do not see how such an argument could have any effect upon this Court in its decision. The question before this Court is:

Shall the distribution of these properties in retirement of the stock because of the bankruptcy question involved be recognized? If it is to be recognized, and thereafter petitioner purchased the properties for $746,525, shall that purchase be recognized and taxpayer's cost be $746,525? It just so happens that in this case the prior depreciated cost to the taxpayer was less than $746,525. It could well happen that the converse would be true and that stock

would be retired with properties that had a very much higher depreciated cost than the price paid by the petitioner for their repurchase. In such a case we are sure that the Government would contend that petitioner's cost for depreciation purposes was this lower amount. It seems to us that this Court in passing upon the rights of taxpayers, and their obligations, as between them and the Government, should take into account and give effect to transactions that are made for bona fide business purposes and should not decide this case or any case purely on the effect such a transaction might have upon a taxpayer's income taxes. As to the above quoted statement, that to us is pure argument ad hominem.

If the decision of the court below is allowed to stand, then the Internal Revenue Service and particularly the local Internal Revenue Agents will bring it up as authority to throw out any bona fide business transaction that results in the diminution of a taxpayer's taxes with all the confusion in the administration of the tax laws that would obviously follow. We do not believe that such a decision should stand.

We respectfully submit that the petition for writ of certiorari should be granted.

Respectfully submitted,

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March 29, 1962